

Federal Court



Cour fédérale

Date: 20241008

Docket: IMM-13580-23

Citation: 2024 FC 1594

Ottawa, Ontario, October 8, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

YIHUA SONG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] This judicial review application arises out of a Refugee Appeal Division [RAD] decision refusing the Applicant's claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant, a citizen of China, claimed asylum based on her fear of arrest at the hands of the Public Security Bureau [PSB] after petitioning authorities for assistance with a real estate dispute. The RAD dismissed the Applicant's appeal of the Refugee Protection Division's [RPD] decision based on cumulative credibility concerns.

[3] I am dismissing this application because the Applicant has failed to establish that the RAD made any reviewable errors in finding that the PSB documents were fraudulent, and in drawing adverse credibility inferences.

II. Analysis

[4] The Applicant challenges the RAD's decision on two grounds. First, she alleges that the RAD erred in its assessment of the PSB documents tendered as evidence in her refugee claim. Second, she argues that the RAD erred in its credibility assessment.

[5] There is no dispute that the standard of review applicable to both alleged errors is reasonableness. A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8.

A. *The RAD's assessment of the PSB documents is reasonable*

[6] In support of her refugee claim, the Applicant submitted four documents allegedly issued by the PSB: two Administrative Penalty Decisions [APDs], a summons, and an arrest warrant. Based on substantive concerns with the APDs and the arrest warrant, the RAD concluded, on a balance of probabilities, that they were fraudulent. The RAD determined that the summons was also fraudulent given the interrelated nature of the documents.

(1) New arguments will not be entertained

[7] As a preliminary matter, Applicant's counsel sought leave to raise a new issue at the hearing, namely that there were serious errors in the translation of the arrest warrant. Generally, courts will refuse to exercise their discretion and consider a new issue on judicial review where the issue could have been raised before the original decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26 [*Alberta Information and Privacy Commissioner*]; *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71. There are a number of reasons that underlie this general rule, including respect for the first instance decision-maker, prejudice to the opposing party, and the possibility of denying the court an adequate evidentiary record to consider the issue at hand: *Alberta Information and Privacy Commissioner* at paras 24-26.

[8] After hearing submissions from both parties, I declined to exercise my discretion to allow the Applicant to raise this new issue for the following reasons. The authenticity of the arrest warrant was a live issue before both the RPD and the RAD. The Applicant was represented by

counsel before both tribunals. This was therefore an issue that could have been raised with due diligence long before the day of the hearing of this judicial review application. It is incumbent on applicants to put their best foot forward when they file their written submissions. In addition, it would be prejudicial to the Respondent to allow this new issue to be raised at this late stage of the proceeding. Furthermore, an adjournment would have been required as evidence would have been necessary to establish any translation errors.

[9] During oral submissions, Applicant's counsel attempted to make three other new legal arguments concerning the PSB's arrest warrant and the APDs — arguments that had not been made in the Applicant's Memorandum of Fact and Law. I also decline to exercise my discretion to consider these new arguments.

- (2) The Applicant has failed to establish the RAD erred in finding the PSB documents were fraudulent

[10] I am not persuaded that the RAD erred in finding that the two APDs, the arrest warrant, and the summons were fraudulent. In my view, the RAD provided clear and cogent reasons justifying its decision.

[11] As the RAD recognized, documents issued by a competent foreign authority are presumed to be authentic: *Hossain v Canada (Citizenship and Immigration)*, 2023 FC 1255 at para 63; *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 at para 85 [*Liu 2020*]; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10. This presumption of validity, however,

may be rebutted where there is good reason to doubt the credibility or trustworthiness of the document: *Liu 2020* at para 87.

[12] Based on objective country evidence, the RAD concluded that APDs must state the category and basis of the administrative penalty. However, the first APD cites a statutory provision about warnings or fines, not the penalty of detention allegedly imposed on the Applicant. While the second APD cites the relevant statutory provision, the RAD noted that the provision imposes a minimum penalty of 10 days imprisonment, whereas the Applicant claimed that she was detained for seven days. Finally, in respect of the arrest warrant, the RAD held that the statutory provision cited therein refers to the calculation of statutory time periods, and had nothing to do with an arrest.

[13] I agree with the RAD that the above-noted anomalies are not minor nor immaterial discrepancies, but rather relate to significant and mandatory aspects of the documents: the legal justifications for the detentions and arrest. As the RAD aptly stated, “it is reasonable to expect that legally required documents issued by the PSB explaining the Appellant’s alleged detention and attempted arrest would cite the correct statutory provision justifying that detention and arrest and that the alleged punishment would be consistent with the cited legal provision”: Refugee Appeal Division’s Reasons and Decision dated September 27, 2023 at para 26.

[14] In addition, the RAD relied on objective documentary evidence that fraudulent documents are widely available in China to support its finding that the APDs and the arrest warrant submitted by the Applicant were fraudulent. This conclusion is consistent with the jurisprudence holding that the prevalence of fraudulent documents in a country is not, in and of itself, sufficient reason to

reject foreign documents as forgeries: *Liu 2020* at para 88; *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 24; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157 at paras 53-55.

[15] Based on the interrelated nature of the evidence and the ready availability of fraudulent documents in China, the RAD found that the summons was also fraudulent and thus assigned it no weight:

[29]... The submission of a false or irregular document may have an impact on the weight assigned to other documents, especially when they are interrelated, and on the overall credibility of a claimant. Here, the four PSB documents all originate with the Appellant's husband, and all relate to the Appellant's allegations of her activities in China and the results of those activities, and the failure to respond to the summons is said to have resulted in the issuance of the arrest warrant. Considering the submission of three other fraudulent and inter-related documents and the prevalence and easy availability of fraudulent documents in China, I find that this document is also fraudulent. I find that the RPD was correct to assign no weight to the summons.

[Citations omitted]

[16] The RAD's approach finds support in this Court's jurisprudence: *Lu v Canada (Citizenship and Immigration)*, 2016 FC 846 at paras 33-35 [*Lu*]. As Justice Southcott stated, "where there is a relationship between documents supporting an applicant's claims, it is not unreasonable for the RAD to take one document into account in its assessment of the other": *Lu* at para 35.

[17] The Applicant relies on *Liu v Canada (Citizenship and Immigration)*, 2023 FC 275 [*Liu 2023*] to argue that the RAD erred in rejecting the genuineness of the summons. That case is distinguishable. In *Liu 2023*, the RAD based the genuineness of two documents on the fact that

the same authority had issued the summons that it had deemed fraudulent. The Court, however, found the RAD's assessment and determination about the summons to be unreasonable, by extension tainting the RAD's findings on the other two interrelated documents: *Liu 2023* at paras 44, 46. In contrast, I find that the RAD's determination about the genuineness of the APDs and the arrest warrant was reasonable.

[18] For these reasons, I am unable to find that the RAD made any reviewable errors in concluding that the PSB documents (the two APDs, the arrest warrant, and the summons) were fraudulent. Rather, I find that the RAD's conclusions were reasonably open to it based on the facts and the law: *Vavilov* at paras 83, 86.

B. *The RAD's adverse credibility assessment is reasonable*

[19] Significant deference is owed to the RAD with respect to the assessment of credibility: *Adaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at para 23; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 23; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 11.

[20] I do not accept the Applicant's argument that the RAD impugned her credibility based on peripheral issues. The RAD's adverse credibility determination was based on the Applicant's failure to disclose her US visa application and her trip to Beijing, as well as on evolving testimony about why she booked a flight to Canada.

[21] The RAD drew adverse inferences regarding three issues stemming from the Applicant's non-disclosure of her US visa application in Beijing: (i) it contradicts the Applicant's Basis of Claim wherein she stated that she had not previously been refused a visa for any country; (ii) the trip to Beijing for the visa application on October 17, 2019 contradicts the Applicant's written and oral testimony that she remained at home between October 10 and when she left for Canada on October 24; and (iii) the US visa application contradicts the Applicant's oral testimony that she neither planned nor hoped to travel anywhere other than Canada in 2019.

[22] In my view, the RAD's credibility determination is reasonable. The Applicant was given multiple opportunities by the RPD to disclose her trip to the US consulate before confronting her about it. When asked for an explanation for the omission, the Applicant stated that her husband's Canadian visa application had been refused, so they attempted to get an American visa to travel together. The RAD rejected this, as it does not respond to the above three issues nor to the fact that the Applicant did not admit to the visa application until confronted at her hearing.

[23] Furthermore, after listening to the recording of the hearing, the RAD found that the RPD's questions were clear and that there was no evidence the Applicant was confused by the questions, as she alleged.

[24] The RAD also drew an adverse inference from the Applicant's evolving testimony about when she decided to flee to Canada. The Applicant argued that the exact date she decided to come to Canada is a minor and peripheral detail that should not impact her credibility. However, the RAD found that it was not the date itself that was important, but rather that the Applicant gave

evolving testimony about what precipitated her decision to leave China — the visa refusal on October 17 or the arrest of the other property owners on October 20. Given this went to the heart of the Applicant's claim, the RAD reasonably drew an adverse inference.

[25] I find no basis upon which to interfere with the RAD's adverse credibility findings.

III. Conclusion

[26] Based on the foregoing, the RAD's decision is reasonable. The application for judicial review is therefore dismissed.

[27] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-13580-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13580-23

STYLE OF CAUSE: YIHUA SONG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 25, 2024

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: OCTOBER 8, 2024

APPEARANCES:

Vakkas Bilsin FOR THE APPLICANT

Gerald Grossi FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates LLP FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario